

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE COMMISSIONER OF REVENUE

In the Matter of the Revocation of the
Asbestos Site Supervisor License of
Michael P. Batkiewicz

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

This matter came on before Administrative Law Judge Raymond R. Krause ("ALJ") on December 10, 2010, for hearing at the Office of Administrative Hearings, 600 North Robert Street, St. Paul, MN 55101. The hearing was scheduled pursuant to a Notice of and Order for Hearing, dated November 3, 2010.

Cecilia K. Morrow, Attorney, Department of Revenue, appeared on behalf of the Minnesota Department of Revenue ("Department"). The Respondent, Michael P. Batkiewicz, did not appear in person or by counsel. The record closed upon the Respondent's default on December 10, 2010.

The Notice of and Order for Hearing was sent to the Respondent at the address found on the service list and was not returned as undelivered.

STATEMENT OF ISSUE

Did Respondent fail to file tax returns with the Minnesota Department of Revenue for any of the tax years 2000, 2002, 2003, 2004, 2005, or 2006 thereby subjecting his Asbestos Site Supervisor License to revocation pursuant to Minn. Stat. § 270C.72?

Based upon all of the files, records and proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. On November 4, 2010, the Notice of and Order for Hearing and Notice of Appearance was sent by first class mail to Michael P. Batkiewicz at the address listed on the "Affidavit of Mailing to Last Known Address" dated November 4, 2010. It was not returned to the Department.

2. The Respondent failed to appear at the hearing, did not obtain the ALJ's prior approval to be absent from the prehearing conference, did not file a Notice of Appearance, and did not request a continuance or any other relief.

3. The Notice of and Order for Hearing contained the following informational warning:

Respondent's failure to appear at the hearing may result in a finding that the Respondent is in default, that the Department's allegations contained in this Notice and Order may be accepted as true, and its proposed action may be upheld.

4. Because Respondent failed to appear, he is in default.

5. Pursuant to Minn. R. 1400.6000, the allegations contained in the Notice of and Order for Hearing are taken as true and incorporated by reference into these Findings of Fact.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Revenue are authorized to consider the charges against Respondent under Minn. Stat. § 270C.72.

2. Respondent received due, proper and timely notice of the charges against him, and of the time and place of the hearing. This matter is, therefore, properly before the Commissioner and the Administrative Law Judge.

3. The Department has complied with all relevant substantive and procedural legal requirements.

4. Under Minn. R. 1400.6000, a contested case may be decided adversely to a party who defaults. On default, the allegations of and the issues set out in that Notice of and Order for Hearing or other pleading may be taken as true or deemed proved without further evidence.

5. The Respondent is in default herein as a result of his failure, without the ALJ's prior consent, to appear at the hearing.

6. Respondent failed to file tax returns to the Department for any of the tax years 2000, 2002, 2003, 2004, 2005, or 2006.

7. Disciplinary action against the Respondent is in the public interest.

8. This Order is effective December, 20, 2010.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED: that the Commissioner of the Department of Revenue give notice to the Department of Health that the Asbestos Site Supervisor License Number AS7463, issued to Michael P. Batkiewicz, be revoked.

Dated: December 13, 2010

s/Raymond R. Krause
RAYMOND R. KRAUSE
Chief Administrative Law Judge

Reported: Default

NOTICE

This Report is a recommendation, not a final decision. The Commissioner of Revenue will make the final decision after reviewing the record and may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the Commissioner's decision shall not be made until this Report has been available to the parties to the proceeding for at least ten (10) days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact the Office of the Commissioner, to ascertain the procedure for filing exceptions or presenting argument to the Commissioner.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.